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HOUSE BILL 417

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Al Park

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR
OR DRUGS; PROVIDING FOR TELEPHONIC HEARINGS OR HEARINGS BY
OTHER APPROPRIATE ELECTRONIC MEANS IN THE LICENSE REVOCATION
ADMINISTRATIVE HEARING PROCESS; CLARIFYING THE POWERS OF THE
HEARING OFFICER; CLARIFYING APPEALS; AMENDING A SECTION OF THE
IMPLIED CONSENT ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 66-8-112 NMSA 1978 (being Laws 1978,
Chapter 35, Section 520, as amended by Laws 2003, Chapter 51,
Section 15 and by Laws 2003, Chapter 90, Section 8) is amended
to read:

"66-8-112. REVOCATION OF LICENSE OR PRIVILEGE TO
DRIVE--NOTICE--EFFECTIVE DATE--HEARING--[HEARING COSTS]
REVIEW.--

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1 A. The effective date of revocation pursuant to
2 Section 66-8-111 NMSA 1978 is twenty days after notice of
3 revocation or, if the person whose driver's license or
4 privilege to drive is being revoked or denied requests a
5 hearing pursuant to this section, the date that the department
6 issues the order following that hearing. The date of notice of
7 revocation is:

8 (1) the date the law enforcement officer
9 serves written notice of revocation and of right to a hearing
10 pursuant to Section 66-8-111.1 NMSA 1978; or

11 (2) in the event the results of a chemical
12 test cannot be obtained immediately, the date notice of
13 revocation is served by mail by the department. This notice of
14 revocation and of right to a hearing shall be sent by certified
15 mail and shall be deemed to have been served on the date borne
16 by the return receipt showing delivery, refusal of the
17 addressee to accept delivery or attempted delivery of the
18 notice at the address obtained by the arresting law enforcement
19 officer or on file with the department.

20 B. Within ten days after receipt of notice of
21 revocation pursuant to Subsection A of this section, a person
22 whose license or privilege to drive is revoked or denied or the
23 person's agent may request a hearing. The hearing request
24 shall be made in writing and shall be accompanied by a payment
25 of twenty-five dollars (\$25.00) or a sworn statement of

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1 indigency on a form provided by the department. A standard for
2 indigency shall be established pursuant to regulations adopted
3 by the department. Failure to request a hearing within ten
4 days shall result in forfeiture of the person's right to a
5 hearing. Any person less than eighteen years of age who fails
6 to request a hearing within ten days shall have notice of
7 revocation sent to ~~[his]~~ the person's parent, guardian or
8 custodian by the department. A date for the hearing shall be
9 set by the department, if practical, within thirty days after
10 receipt of notice of revocation. ~~[The hearing shall be held in
11 the county in which the offense for which the person was
12 arrested took place.]~~

13 C. The department may postpone or continue any
14 hearing on its own motion or upon application from the person
15 and for good cause shown for a period not to exceed ninety days
16 from the date of notice of revocation and provided that the
17 department extends the validity of the temporary license for
18 the period of the postponement or continuation.

19 D. ~~[At the hearing, the department or its agent may
20 administer oaths and may issue subpoenas for the attendance of
21 witnesses and the production of relevant books and papers.]~~

22 The hearing shall be conducted by a hearing officer designated
23 by the secretary. The powers of the hearing officer include
24 issuing subpoenas for the attendance of witnesses and the
25 production of relevant documents and things, administering

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1 oaths or affirmations to witnesses, taking testimony, examining
2 witnesses, admitting or excluding evidence and reopening any
3 hearing to receive additional evidence. The hearing may be
4 conducted with all parties, witnesses and the hearing officer
5 participating in person, by telephone or by other appropriate
6 electronic means.

7 E. The hearing shall be limited to the issues:

8 (1) whether the law enforcement officer had
9 reasonable grounds to believe that the person had been driving
10 a motor vehicle within this state while under the influence of
11 intoxicating liquor or drugs;

12 (2) whether the person was arrested;

13 (3) whether this hearing is held no later than
14 ninety days after notice of revocation; and either

15 (4) whether:

16 (a) the person refused to submit to a
17 test upon request of the law enforcement officer; and

18 (b) the law enforcement officer advised
19 that the failure to submit to a test could result in revocation
20 of the person's privilege to drive; or

21 (5) whether:

22 (a) the chemical test was administered
23 pursuant to the provisions of the Implied Consent Act; and

24 (b) the test results indicated an
25 alcohol concentration in the person's blood or breath of eight

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1 one hundredths or more if the person is twenty-one years of age
2 or older, four one hundredths or more if the person is driving
3 a commercial motor vehicle or two one hundredths or more if the
4 person is less than twenty-one years of age.

5 F. The department shall enter an order sustaining
6 the revocation or denial of the person's license or privilege
7 to drive if the department finds that:

8 (1) the law enforcement officer had reasonable
9 grounds to believe the driver was driving a motor vehicle while
10 under the influence of intoxicating liquor or drugs;

11 (2) the person was arrested;

12 (3) this hearing is held no later than ninety
13 days after notice of revocation; and

14 (4) either:

15 (a) the person refused to submit to the
16 test upon request of the law enforcement officer after the law
17 enforcement officer advised [~~him~~] the person that [~~his~~] the
18 person's failure to submit to the test could result in the
19 revocation of [~~his~~] the person's privilege to drive; or

20 (b) that a chemical test was
21 administered pursuant to the provisions of the Implied Consent
22 Act and the test results indicated an alcohol concentration in
23 the person's blood or breath of eight one hundredths or more if
24 the person is twenty-one years of age or older, four one
25 hundredths or more if the person is driving a commercial motor

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1 vehicle or two one hundredths or more if the person is less
2 than twenty-one years of age.

3 G. If one or more of the elements set forth in
4 Paragraphs (1) through (4) of Subsection F of this section are
5 not found by the department, the person's license shall not be
6 revoked.

7 H. A person adversely affected by an order of the
8 department may seek review within thirty days in the district
9 court in the county in which the offense for which the person
10 was arrested took place. [~~The district court, upon thirty~~
11 ~~days' written notice to the department, shall hear the case.~~]
12 On review, it is for the court to determine only whether
13 reasonable grounds exist for revocation or denial of the
14 person's license or privilege to drive based on the record of
15 the administrative proceeding.

16 I. Any person less than eighteen years of age shall
17 have results of [~~his~~] the person's hearing forwarded by the
18 department to [~~his~~] the person's parent, guardian or
19 custodian."

20 Section 2. EFFECTIVE DATE.--The effective date of the
21 provisions of this act is July 1, 2009.